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2005 SEP 30 P 4: 26

OFFICE WEST VIRGINIA
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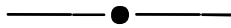
FOURTH EXTRAORDINARY SESSION, 2005



ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 402

(By By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]



Passed September 13, 2005

In Effect from Passage

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SECRETARY OF STATE

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COMMITTEE SUBSTITUTE

FOR

H. B. 402

(BY MR. SPEAKER, MR. KISS, AND DELEGATE TRUMP)

[BY REQUEST OF THE EXECUTIVE]

[Passed September 13, 2005; in effect from passage.]

AN ACT to repeal §3-8-5c of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto three new sections, designated §3-8-1a, §3-8-2b and §3-8-14; and to amend and reenact §3-8-2, §3-8-4, §3-8-5a, §3-8-7, §3-8-8 and §3-8-12 of said code, all relating to regulating elections; defining terms; requiring candidates and persons making electioneering communications to keep and make available for inspection records of campaign-related contributions and spending; requiring persons who engage in electioneering communications to file financial statements with Secretary of State; contents of statement and filing requirements; penalties for filing delinquent or incomplete financial statements; granting the Secretary of State legislative and emergency rule-making authority; clarifying that electioneering communications made in coordination with a candidate or political party are considered contributions to such candidate or political party; increasing penalty for violations of prohibitions on

corporate contributions to candidates or for electioneering communications; requiring political organizations to register with the Secretary of State prior to soliciting or accepting contributions; prohibiting political organizations from accepting contributions in excess of one thousand dollars before the primary and general elections; making it unlawful to create more than one political organization with the intent to avoid or evade contribution limitations; and establishing an internal operating date.

Be it enacted by the Legislature of West Virginia:

That §3-8-5c of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto three new sections, designated §3-8-1a, §3-8-2b and §3-8-14; and that §3-8-2, §3-8-4, §3-8-5a, §3-8-7, §3-8-8 and §3-8-12 of said code be amended and reenacted, all to read as follows:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-1a. Definitions.

1 As used in this article, the following terms have the
2 following definitions:

3 (1) "Ballot issue" means a constitutional amendment,
4 special levy, bond issue, local option referendum, municipal
5 charter or revision, an increase or decrease of corporate limits
6 or any other question that is placed before the voters for a
7 binding decision.

8 (2) "Broadcast, cable, or satellite communication" means
9 a communication that is publicly distributed by a television
10 station, radio station, cable television system, or satellite
11 system.

12 (3) "Candidate" means an individual who:

13 (A) Has filed a certificate of announcement under section
14 seven, article five, of this chapter or a municipal charter;

15 (B) Has filed a declaration of candidacy under section
16 twenty-three, article five of this chapter;

17 (C) Has been named to fill a vacancy on a ballot; or

18 (D) Has declared a write-in candidacy or otherwise publicly
19 declared his or her intention to seek nomination or election for
20 any state, district, county or municipal office or party office to
21 be filled at any primary, general or special election.

22 (4) “Candidate’s committee” means a political committee
23 established with the approval of or in cooperation with one pre-
24 candidate or candidate to explore the possibilities of seeking a
25 particular office and/or to support or aid his or her nomination
26 or election to an office in one election cycle. If a candidate
27 directs or influences the activities of more than one committee,
28 those committees shall be considered one committee of the
29 purpose of contribution limits.

30 (5) “Clearly identified” means that the name, nickname,
31 photograph, drawing or other depiction of the candidate appears
32 or the identity of the candidate is otherwise apparent through an
33 unambiguous reference such as “the Governor”, “your Senator”
34 or “the incumbent”, or through an unambiguous reference to his
35 or her status as a candidate such as “the Democratic candidate
36 for Governor” or “the Republican candidate for Supreme Court
37 of Appeals”.

38 (6) “Contribution” means a gift subscription, assessment,
39 payment for services, dues, advance, donation, pledge, contract,
40 agreement, forbearance or promise of money or other tangible
41 thing of value, whether conditional or legally enforceable, or a
42 transfer of money or other tangible thing of value to a person,
43 made for the purpose of influencing the nomination, election or
44 defeat of a candidate. An offer or tender of a contribution is not
45 a contribution if expressly and unconditionally rejected or
46 returned. A contribution does not include volunteer personal
47 services provided without compensation.

48 (7) "Direct costs of purchasing, producing or disseminating
49 electioneering communications" means:

50 (A) Costs charged by a vendor, including, but not limited
51 to, studio rental time, compensation of staff and employees,
52 costs of video or audio recording media and talent, material and
53 printing costs and postage; or

54 (B) The cost of airtime on broadcast, cable or satellite radio
55 and television stations, the cost of disseminating printed
56 materials, establishing a telephone bank, studio time, use of
57 facilities and the charges for a broker to purchase airtime.

58 (8) "Disclosure date" means either of the following:

59 (A) The first date during any calendar year on which any
60 electioneering communication is disseminated after the person
61 paying for the communication has spent a total of five thousand
62 dollars or more for the direct costs of purchasing, producing or
63 disseminating electioneering communications; or

64 (B) Any other date during that calendar year after any
65 previous disclosure date on which the person has made addi-
66 tional expenditures totaling five thousand dollars or more for
67 the direct costs of purchasing, producing or disseminating
68 electioneering communications.

69 (9) "Election" means any primary, general or special
70 election conducted under the provisions of this code or under
71 the charter of any municipality at which the voters nominate or
72 elect candidates for public office. For purposes of this article,
73 each primary, general, special or local election constitutes a
74 separate election. This definition is not intended to modify or
75 abrogate the definition of the term "nomination" as used in this
76 article.

77 (10) (A) "Electioneering communication" means any paid
78 communication made by broadcast, cable or satellite signal,

79 mass mailing, telephone bank, leaflet, pamphlet, flyer or
80 outdoor advertising or published in any newspaper, magazine
81 or other periodical that:

82 (i) Refers to a clearly identified candidate for a statewide
83 office or the Legislature;

84 (ii) Is publicly disseminated within:

85 (a) Thirty days before a primary election at which the
86 nomination for office sought by the candidate is to be deter-
87 mined; or

88 (b) Sixty days before a general or special election at which
89 the office sought by the candidate is to be filled; and

90 (iii) Is targeted to the relevant electorate.

91 (B) "Electioneering communication" does not include:

92 (i) A news story, commentary or editorial disseminated
93 through the facilities of any broadcast, cable or satellite
94 television or radio station, newspaper, magazine or other
95 periodical publication not owned or controlled by a political
96 party, political committee or candidate: *Provided*, That a news
97 story disseminated through a medium owned or controlled by
98 a political party, political committee, or candidate is neverthe-
99 less exempt if the news is:

100 (a) A bona fide news account communicated in a publica-
101 tion of general circulation or on a licensed broadcasting facility;
102 and

103 (b) Is part of a general pattern of campaign-related news
104 that gives reasonably equal coverage to all opposing candidates
105 in the circulation, viewing or listening area;

106 (ii) A communication that is required to be reported to the
107 State Election Commission or the Secretary of State as an

108 expenditure pursuant to any provision of this article, other than
109 section two-b of this article, or the rules of the State Election
110 Commission or the Secretary of State promulgated pursuant to
111 such provision: *Provided*, That, independent expenditures
112 required to be reported pursuant to subsection (b), section two
113 of this article are not exempt from the reporting requirements
114 of this section;

115 (iii) A candidate debate or forum conducted pursuant to
116 rules adopted by the State Election Commission or the Secre-
117 tary of State or a communication promoting that debate or
118 forum made by or on behalf of its sponsor;

119 (iv) A communication paid for by any organization operat-
120 ing under Section 501(c)(3) of the Internal Revenue Code of
121 1986;

122 (v) A communication made while the Legislature is in
123 session which, incidental to promoting or opposing a specific
124 piece of legislation pending before the Legislature, urges the
125 audience to communicate with a member or members of the
126 Legislature concerning that piece of legislation;

127 (vi) A statement or depiction by a membership organiza-
128 tion, in existence prior to the date on which the individual
129 named or depicted became a candidate, made in a newsletter or
130 other communication distributed only to bona fide members of
131 that organization;

132 (vii) A communication made solely for the purpose of
133 attracting public attention to a product or service offered for
134 sale by a candidate or by a business owned or operated by a
135 candidate which does not mention an election, the office sought
136 by the candidate or his or her status as a candidate; or

137 (viii) A communication, such as a voter's guide, which
138 refers to all of the candidates for one or more offices, which
139 contains no appearance of endorsement for or opposition to the

140 nomination or election of any candidate and which is intended
141 as nonpartisan public education focused on issues and voting
142 history.

143 (11) “Financial agent” means any person acting for and by
144 himself or herself, or any two or more natural persons acting
145 together or cooperating in a financial way to aid or take part in
146 the nomination or election of any candidate for public office, or
147 to aid or promote the success or defeat of any political party at
148 any election.

149 (12) “Fund-raising event” means an event such as a dinner,
150 reception, testimonial, cocktail party, auction or similar affair
151 through which contributions are solicited or received by such
152 means as the purchase of a ticket, payment of an attendance fee
153 or by the purchase of goods or services.

154 (13) “Independent expenditure” means an expenditure made
155 by a person other than a candidate or a candidate’s committee
156 in support of or opposition to the nomination or election of one
157 or more clearly identified candidates and without consultation
158 or coordination with or at the request or suggestion of the
159 candidate whose nomination or election the expenditure
160 supports or opposes or the candidate’s agent. Supporting or
161 opposing the election of a clearly identified candidate includes
162 supporting or opposing the candidates of a clearly identified
163 political party. An expenditure which does not meet the criteria
164 for an independent expenditure is considered a contribution.

165 (14) “Mass mailing” means a mailing by United States
166 mail, facsimile or electronic mail of more than five hundred
167 pieces of mail matter of an identical or substantially similar
168 nature within any thirty-day period.

169 (15) “Membership organization” means a group that grants
170 bona fide rights and privileges, such as the right to vote, to elect
171 officers or directors and the ability to hold office, to its mem-

172 bers and which uses a majority of its membership dues for
173 purposes other than political purposes. “Membership organiza-
174 tion” does not include organizations that grant membership
175 upon receiving a contribution.

176 (16) “Name” means the full first name, middle name or
177 initial, if any, and full legal last name of an individual and the
178 full name of any association, corporation, committee or other
179 organization of individuals, making the identity of any person
180 who makes a contribution apparent by unambiguous reference.

181 (17) “Person” means an individual, partnership, committee,
182 association, and any other organization or group of individuals.

183 (18) “Political action committee” means a committee
184 organized by one or more persons for the purpose of supporting
185 or opposing the nomination or election of one or more candi-
186 dates or the passage or defeat of one or more ballot issues.

187 (19) “Political party” means a political party as defined by
188 section eight, article one, chapter three of this code or any
189 committee established, financed, maintained or controlled by
190 the party, including any subsidiary, branch or local unit thereof
191 and including national or regional affiliates of the party.

192 (20) “Political purposes” means supporting or opposing the
193 nomination, election or defeat of one or more candidates or the
194 passage or defeat of a ballot issue, supporting the retirement of
195 the debt of a candidate or political committee or the administra-
196 tion or activities of an established political party or an organiza-
197 tion which has declared itself a political party and determining
198 the advisability of becoming a candidate under the pre-candi-
199 dacy financing provisions of this chapter.

200 (21) “Targeted to the relevant electorate” means a commu-
201 nication which refers to a clearly identified candidate for
202 statewide office or the Legislature and which can be received
203 by ten thousand or more individuals in the state in the case of

204 a candidacy for statewide office and five hundred or more
205 individuals in the district in the case of a candidacy for the
206 Legislature.

207 (22) "Telephone bank" means telephone calls that are
208 targeted to the relevant electorate, other than telephone calls
209 made by volunteer workers, regardless of whether paid profes-
210 sionals designed the telephone bank system, developed calling
211 instructions or trained volunteers.

212 (23) "Two-year election cycle" means the twenty-four
213 month period that begins the day after a general election and
214 ends on the day of the subsequent general election.

**§3-8-2. Accounts for receipts and expenditures in elections;
requirements for reporting independent expendi-
tures.**

1 (a) Except for: (1) Candidates for party committeeman and
2 committeewoman; and (2) federal committees required to file
3 under the provisions 2 U.S.C. §434, all candidates for nomina-
4 tion or election and all persons supporting, aiding or opposing
5 the nomination, election or defeat of any candidate shall keep
6 for a period of six months records of receipts and expenditures
7 which are made for political purposes. All of the receipts and
8 expenditures are subject to regulation by the provisions of this
9 article. Verified financial statements of the records and expen-
10 ditures shall be made and filed as public records by all candi-
11 dates and by their financial agents, representatives or any
12 person acting for and on behalf of any candidate and by the
13 treasurers of all political party committees.

14 (b) In addition to any other reporting required by the
15 provisions of this chapter, any person making an independent
16 expenditure in the amount of one thousand dollars or more for
17 any statewide, legislative or multicounty judicial candidate or
18 in the amount of five hundred dollars or more for any county
19 office, single-county judicial candidate, committee supporting
20 or opposing a candidate on the ballot in more than one county,

21 or any municipal candidate on a municipal election ballot, after
22 the eleventh day but more than twelve hours before the day of
23 any election shall report the expenditure, on a form prescribed
24 by the Secretary of State, within twenty-four hours after the
25 expenditure is made or debt is incurred for a communication, to
26 the Secretary of State by hand-delivery, facsimile or other
27 means to assure receipt by the Secretary of State within the
28 twenty-four-hour period.

29 (c) Any independent expenditure must include a clear and
30 conspicuous public notice which identifies the name of the
31 person who paid for the expenditure and states that the commu-
32 nication is not authorized by the candidate or his or her commit-
33 tee.

34 (d) Any person who has spent a total of five thousand
35 dollars or more for the direct costs of purchasing, producing or
36 disseminating electioneering communications during any
37 calendar year shall maintain all financial records and receipts
38 related to such expenditure for a period of six months following
39 the filing of a disclosure pursuant to subsection (a) of this
40 section and, upon request, shall make such records and receipts
41 available to the Secretary of State or county clerk for the
42 purpose of an audit as provided in section seven of this article.
43 Any person who willfully fails to comply with this section is
44 guilty of a misdemeanor and, upon conviction thereof, shall be
45 fined not less than five hundred dollars, or confined in jail for
46 not more than one year, or both fined and confined.

§3-8-2b. Disclosure of electioneering communications.

1 (a) Every person who has spent a total of five thousand
2 dollars or more for the direct costs of purchasing, producing or
3 disseminating electioneering communications during any
4 calendar year shall, within twenty-four hours of each disclosure
5 date, file with the Secretary of State a statement which contains:

6 (1) The name of the person making the expenditure, the
7 name of any person sharing or exercising direction or control
8 over the activities of the person making the expenditure and the
9 name of the custodian of the books and accounts of the person
10 making the expenditure;

11 (2) If the person making the expenditure is not an individ-
12 ual, the principal place of business of the partnership, commit-
13 tee, association, organization or group which made the expendi-
14 ture;

15 (3) The amount of each expenditure of more than one
16 thousand dollars made for electioneering communications
17 during the period covered by the statement and the name of the
18 person to whom the expenditure was made;

19 (4) The elections to which the electioneering communica-
20 tions pertain and the names, if known, of the candidates referred
21 to or to be referred to therein; and

22 (5) The names and addresses of any contributors who
23 contributed a total of more than one thousand dollars between
24 the first day of the preceding calendar year and the disclosure
25 date and whose contributions were used to pay for electioneer-
26 ing communications.

27 (b) With regard to the contributors required to be listed
28 pursuant to subdivision (5), subsection (a) of this section, the
29 statement shall also include:

30 (1) The month, day and year that the contributions of any
31 single contributor exceeded two hundred fifty dollars;

32 (2) If the contributor is a political action committee, the
33 name and address the political action committee registered with
34 the State Election Commission;

35 (3) If the contributor is an individual, the name and address
36 of the individual, his or her occupation, the name and address
37 of the individual's current employer, if any, or, if the individual
38 is self-employed, the name and address of the individual's
39 business, if any;

40 (4) A description of the contribution, if other than money;

41 (5) The value in dollars and cents of the contribution.

42 (c)(1) Any person who makes a contribution for the purpose
43 of funding the direct costs of purchasing, producing or dissemi-
44 nating an electioneering communication under this section
45 shall, at the time the contribution is made, provide his or her
46 name and address to the recipient of the contribution;

47 (2) Any individual who makes contributions totaling two
48 hundred fifty dollars or more between the first day of the
49 preceding calendar year and the disclosure date for the purpose
50 of funding the direct costs of purchasing, producing or dissemi-
51 nating electioneering communications shall, at the time the
52 contribution is made, provide the name of his or her occupation
53 and of his or her current employer, if any, or, if the individual
54 is self-employed, the name of his or her business, if any, to the
55 recipient of the contribution.

56 (d) In each electioneering communication, a statement shall
57 appear or be presented in a clear and conspicuous manner that:

58 (1) Clearly indicates that the electioneering communication
59 is not authorized by the candidate or the candidate's committee;
60 and

61 (2) Clearly identifies the person making the expenditure for
62 the electioneering communication.

63 *Provided*, That if the electioneering communication appears
64 on or is disseminated by broadcast, cable or satellite transmis-

65 sion, the statement required by this subsection must be both
66 spoken clearly and appear in clearly readable writing at the end
67 of the communication.

68 (e) Within five business days after receiving a disclosure of
69 electioneering communications statement pursuant to this
70 section, the Secretary of State shall make information in the
71 statement available to the public through the Internet.

72 (f) For the purposes of this section, a person is considered
73 to have made an expenditure when the person has entered into
74 a contract to make the expenditure at a future time.

75 (g) The Secretary of State is hereby directed to propose
76 legislative rules and emergency rules implementing this section
77 for legislative approval in accordance with the provisions of
78 article three, chapter twenty-nine-a of this code.

79 (h) If any person, including but not limited to, a political
80 organization (as defined in section 527(e)(1) of the Internal
81 Revenue Code of 1986) makes, or contracts to make, any
82 expenditure for electioneering communications which is
83 coordinated with and made with the cooperation, consent or
84 prior knowledge of a candidate, candidate's committee or agent
85 of a candidate, the expenditure shall be treated as a contribution
86 and expenditure by the candidate. If the expenditure is coordi-
87 nated with and made with the cooperation or consent of a state
88 or local political party or committee, agent or official of that
89 party, the expenditure shall be treated as a contribution to and
90 expenditure by the candidate's party.

§3-8-4. Treasurers and financial agents; written designation requirements.

1 (a) No person may act as the treasurer of any political
2 committee, or as financial agent for any candidate for nomina-
3 tion or election to any statewide office, to any office encom-
4 passing an election district larger than a county or to any

5 legislative office or for any person supporting, aiding or
6 opposing the nomination, election or defeat of any candidate for
7 an office encompassing an election district larger than a county,
8 unless a written statement designating that person as the
9 treasurer or financial agent is filed with the Secretary of State
10 at least twenty-eight days before the election at which that
11 person is to act as a financial agent or treasurer and is received
12 by the Secretary of State before midnight, Eastern Standard
13 Time, of that day or if mailed, is postmarked before that hour:
14 *Provided*, That a change of treasurer or financial agent may be
15 made at any time by filing a written statement with the Secre-
16 tary of State.

17 (b) No person may act as treasurer of any committee or as
18 financial agent for any candidate to be nominated or elected by
19 the voters of a county or a district therein, except legislative
20 candidates, or as the financial agent for a candidate for the
21 nomination or election to any other office, unless a written
22 statement designating him or her as the treasurer or financial
23 agent is filed with the clerk of the county commission at least
24 twenty-eight days before the election at which he or she is to act
25 and is received before midnight, Eastern Standard Time, of that
26 day or if mailed, is postmarked before that hour: *Provided*, That
27 a change of treasurer may be made at any time by filing a
28 written statement with the clerk of the county commission.

29 (c) Notwithstanding the provisions of subsections (a) and
30 (b) of this section, a filing designating a treasurer for a state or
31 county political executive committee may be made anytime
32 before the committee either accepts or spends funds. Once a
33 designation is made by a state or county political executive
34 committee, no additional designations are required under this
35 section until a successor treasurer is designated. A state or
36 county political executive committee may terminate a designa-
37 tion made pursuant to this section by making a written request
38 to terminate the designation and by stating in the request that
39 the committee has no funds remaining in the committee's

40 account. This written request shall be filed with either the
41 Secretary of State or the clerk of the county commission as
42 provided by subsections (a) and (b) of this section.

§3-8-5a. Information required in financial statement.

1 (a) Each financial statement required by the provisions of
2 this article, other than a disclosure of electioneering communi-
3 cations pursuant to section two-b of this article, shall contain
4 only the following information:

5 (1) The name, residence and mailing address and telephone
6 number of each candidate, financial agent, treasurer or person
7 and the name, address and telephone number of each associa-
8 tion, organization or committee filing a financial statement.

9 (2) The balance of cash and any other sum of money on
10 hand at the beginning and the end of the period covered by the
11 financial statement.

12 (3) The name of any person making a contribution and the
13 amount of the contribution. If the total contributions of any one
14 person amount to two hundred fifty dollars or more, the
15 residence and mailing address of the contributor and, if the
16 contributor is an individual, his or her major business affiliation
17 and occupation shall also be reported. A contribution totaling
18 more than fifty dollars of currency of the United States or
19 currency of any foreign country by any one contributor is
20 prohibited and a violation of section five-d of this article. The
21 statement on which contributions are required to be reported by
22 this subdivision may not distinguish between contributions
23 made by individuals and contributions made by partnerships,
24 firms, associations committees, organizations or groups.

25 (4) The total amount of contributions received during the
26 period covered by the financial statement.

27 (5) The name, residence and mailing address of any
28 individual or the name and mailing address of each lending
29 institution making a loan or of the spouse cosigning a loan, as
30 appropriate, the amount of any loan received, the date and terms
31 of the loan, including the interest and repayment schedule, and
32 a copy of the loan agreement.

33 (6) The name, residence and mailing address of any
34 individual or the name and mailing address of each partnership,
35 firm, association, committee, organization or group having
36 previously made or cosigned a loan for which payment is made
37 or a balance is outstanding at the end of the period, together
38 with the amount of repayment on the loan made during the
39 period and the balance at the end of the period.

40 (7) The total outstanding balance of all loans at the end of
41 the period.

42 (8) The name, residence and mailing address of any
43 individual, or the name and mailing address of each partnership,
44 firm, association, committee, organization or group to whom
45 each expenditure was made or liability incurred, together with
46 the amount and purpose of each expenditure or liability
47 incurred and the date of each transaction.

48 (9) The total expenditure for the nomination, election or
49 defeat of a candidate or any person supporting, aiding or
50 opposing the nomination, election or defeat of any candidate in
51 whose behalf an expenditure was made or a contribution was
52 given for the primary or other election.

53 (10) The total amount of expenditures made during the
54 period covered by the financial statement.

55 (b) Any unexpended balance at the time of making the
56 financial statements herein provided for shall be properly
57 accounted for in that financial statement and shall appear as a
58 beginning balance in the next financial statement.

59 (c) Each financial statement required by this section shall
60 contain a separate section setting forth the following informa-
61 tion for each fund-raising event held during the period covered
62 by the financial statement:

63 (1) The type of event, date held and address and name, if
64 any, of the place where the event was held.

65 (2) All of the information required by subdivision (3),
66 subsection (a) of this section.

67 (3) The total of all moneys received at the fund-raising
68 event.

69 (4) The expenditures incident to the fund-raising event.

70 (5) The net receipts of the fund-raising event.

71 (d) When any lump sum payment is made to any advertis-
72 ing agency or other disbursing person who does not file a report
73 of detailed accounts and verified financial statements as
74 required in this section, such lump sum expenditures shall be
75 accounted for in the same manner as provided for herein.

76 (e) Any contribution or expenditure made by or on behalf
77 of a candidate for public office, to any other candidate or
78 committee for a candidate for any public office in the same
79 election shall be accounted for in accordance with the provi-
80 sions of this section.

81 (f) No person may make any contribution except from his,
82 her or its own funds, unless such person discloses in writing to
83 the person required to report under this section the name,
84 residence, mailing address, major business affiliation and
85 occupation of the person which furnished the funds to the
86 contributor. All such disclosures shall be included in the
87 statement required by this section.

88 (g) Any firm, association, committee or fund permitted by
89 section eight of this article to be a political committee shall
90 disclose on the financial statement its corporate or other
91 affiliation.

92 (h) No contribution may be made, directly or indirectly, in
93 a fictitious name, anonymously or by one person through an
94 agent, relative or other person so as to conceal the identity of
95 the source of the contribution or in any other manner so as to
96 effect concealment of the contributor's identity.

97 (i) No person may accept any contribution for the purpose
98 of influencing the nomination, election or defeat of a candidate
99 or for the passage or defeat of any ballot issue unless the
100 identity of the donor and the amount of the contribution is
101 known and reported.

102 (j) When any person receives an anonymous contribution
103 which cannot be returned because the donor cannot be identi-
104 fied, that contribution shall be donated to the General Revenue
105 Fund of the State. Any anonymous contribution shall be
106 recorded as such on the candidate's financial statement, but
107 may not be expended for election expenses. At the time of
108 filing, the financial statement shall include a statement of
109 distribution of anonymous contributions, which total amount
110 shall equal the total of all anonymous contributions received
111 during the period.

112 (k) Any membership organization which raises funds for
113 political purposes by payroll deduction, assessing them as part
114 of its membership dues or as a separate assessment, may report
115 the amount raised as follows:

116 (1) If the portion of dues or assessments designated for
117 political purposes equals twenty-five dollars or less per member
118 over the course of a calendar year, the total amount raised for
119 political purposes through membership dues or assessments

120 during the period is reported by showing the amount required
121 to be paid by each member and the number of members.

122 (2) If the total payroll deduction for political purposes of
123 each participating member equals twenty-five dollars or less
124 over the course of a calendar or fiscal year, as specified by the
125 organization, the organization shall report the total amount
126 received for political purposes through payroll deductions
127 during the reporting period and, to the maximum extent
128 possible, the amount of each yearly payroll deduction contribu-
129 tion level and the number of members contributing at each such
130 specified level. The membership organization shall maintain
131 records of the name and yearly payroll deduction amounts of
132 each participating member.

133 (3) If any member contributes to the membership organiza-
134 tion through individual voluntary contributions by means other
135 than payroll deduction, membership dues, or assessments as
136 provided in this subsection, the reporting requirements of
137 subdivision (3), subsection (a) of this section shall apply. Funds
138 raised for political purposes must be segregated from the funds
139 for other purposes and listed in its report.

140 (l) Notwithstanding the provisions of section five of this
141 article or of the provisions of this section to the contrary, an
142 alternative reporting procedure may be followed by a political
143 party executive committee or a political action committee
144 representing a political party in filing financial reports for
145 fund-raising events if the total profit does not exceed five
146 thousand dollars per year. A political party executive committee
147 or a political action committee representing a political party
148 may report gross receipts for the sale of food, beverages,
149 services, novelty items, raffle tickets or memorabilia, except
150 that any receipt of more than fifty dollars from an individual or
151 organization shall be reported as a contribution. A political
152 party executive committee or a political action committee
153 representing a political party using this alternative method of

154 reporting shall report: (i) The name of the committee; (ii) the
155 type of fund-raising activity undertaken; (iii) the location where
156 the activity occurred; (iv) the date of the fund raiser; (v) the
157 name of any individual who contributed more than fifty dollars
158 worth of items to be sold; (vi) the name and amount received
159 from any person or organization purchasing more than fifty
160 dollars worth of food, beverages, services, novelty items, raffle
161 tickets or memorabilia; (vii) the gross receipts of the fund
162 raiser; and (viii) the date, amount, purpose and name and
163 address of each person or organization from whom items with
164 a fair market value of more than fifty dollars were purchased
165 for resale.

**§3-8-7. Failure to file statement; delinquent or incomplete filing;
criminal and civil penalties.**

1 (a) Any person, candidate, financial agent or treasurer of a
2 political party committee who fails to file a sworn, itemized
3 statement required by this article within the time limitations
4 specified in this article or who willfully files a grossly incom-
5 plete or grossly inaccurate statement shall be guilty of a
6 misdemeanor and, upon conviction thereof, shall be fined not
7 less than five hundred dollars or imprisoned in jail for not more
8 than one year, or both, in the discretion of the court. Forty days
9 after any primary or other election, the Secretary of State, or
10 county clerk, or municipal recorder, as the case may be, shall
11 give notice of any failure to file a sworn statement or the filing
12 of any grossly incomplete or grossly inaccurate statement by
13 any person, candidate, financial agent or treasurer of a political
14 party committee and forward copies of any grossly incomplete
15 or grossly inaccurate statement to the prosecuting attorney of
16 the county where the person, candidate, financial agent, or
17 treasurer resides, is located or has its principal place of busi-
18 ness.

19 (b) (1) Any person, candidate, financial agent or treasurer
20 of a political party committee who fails to file a sworn, item-

21 ized statement as required in this article or who files a grossly
22 incomplete or grossly inaccurate statement may be assessed a
23 civil penalty by the Secretary of State of twenty-five dollars a
24 day for each day after the due date the statement is delinquent,
25 grossly incomplete or grossly inaccurate. Forty days after any
26 primary or other election, the county clerk shall give notice to
27 the Secretary of State of any failure to file a sworn statement or
28 the filing of any grossly incomplete or grossly inaccurate
29 statement by any person, candidate, financial agent or treasurer
30 of a political party committee and forward copies of such
31 delinquent, incomplete or inaccurate statements to the Secretary
32 of State.

33 (2) A civil penalty assessed pursuant to the provisions of
34 this section shall be payable to the State of West Virginia and
35 is collectable in any manner authorized by law for the collection
36 of debts.

37 (3) The Secretary of State may negotiate and enter into
38 settlement agreements for the payment of civil penalties
39 assessed as a result of the filing of a delinquent, grossly
40 incomplete or inaccurate statement.

41 (4) The Secretary of State and county clerk may review and
42 audit any sworn statement required to be filed pursuant to the
43 provisions of this article. The State Election Commission shall
44 propose legislative rules for promulgation, in accordance with
45 the provisions of chapter twenty-nine-a of this code, to establish
46 procedures for the assessment of civil penalties as provided in
47 this section.

48 (c) No candidate nominated at a primary election who has
49 failed to file a sworn statement, as required by the provisions of
50 this article, shall have his or her name placed on the official
51 ballot for the ensuing election, unless there has been filed by or
52 on behalf of such candidate, or by his or her financial agent, if
53 any, the financial statement relating to nominations required by

54 this article. It is unlawful to issue a commission or certificate of
55 election, or to administer the oath of office, to any person
56 elected to any public office who has failed to file a sworn
57 statement as required by the provisions of this article and no
58 person may enter upon the duties of his or her office until he or
59 she has filed such statement, nor may he or she receive any
60 salary or emolument for any period prior to the filing of such
61 statement.

§3-8-8. Corporation contributions forbidden; exceptions; penalties; promulgation of rules; additional powers of State Election Commission.

1 (a) No officer of any corporation, or agent or person on
2 behalf of such corporation, whether incorporated under the laws
3 of this or any other state, or foreign country, may pay, give or
4 lend, or authorize to be paid, given or lent, any money or other
5 thing of value belonging to such corporation, to any candidate,
6 financial agent, political committee or other person, for the
7 payment of any primary or other election expenses whatever.
8 No person may solicit or receive such payment, contribution or
9 other thing from any corporation, officer or agent thereof, or
10 other person acting on behalf of such corporation.

11 (b)(1) The provisions of this section shall not be deemed to
12 prohibit:

13 (A) Direct communications, other than by newspapers of
14 general circulation, radio, television or billboard advertising
15 likely to reach the general public, by a corporation to its
16 stockholders and executive or administrative personnel and
17 their families on any subject;

18 (B) Nonpartisan registration and get-out-the-vote cam-
19 paigns by a corporation aimed at its stockholders and execu-
20 tives or administrative personnel and their families; and

21 (C) The solicitation of contributions to a separate segre-
22 gated fund to be utilized for political purposes by any corporate
23 officer, agent or any person on behalf of a corporation. Any
24 separate segregated fund shall be deemed to be a political action
25 committee for the purpose of this article and subject to all
26 reporting requirements thereof.

27 (2) It shall be unlawful:

28 (A) For a separate segregated fund to make a contribution
29 or expenditure by utilizing money or anything of value secured
30 by physical force, job discrimination, financial reprisal or the
31 threat of force, job discrimination or financial reprisal, or as a
32 condition of employment, or by moneys obtained in any
33 commercial transaction;

34 (B) For any person soliciting a stockholder, executive or
35 administrative personnel and members of their family for a
36 contribution to such fund to fail to inform such person of the
37 political purposes of the separate segregated fund at the time of
38 such solicitation;

39 (C) For any person soliciting any other person for a
40 contribution to a separate segregated fund to fail to inform the
41 other person at the time of the solicitation of his or her right to
42 refuse to contribute without any reprisal;

43 (D) For a corporation or a separate segregated fund
44 established by a corporation to solicit contributions to the fund
45 from any person other than its stockholders and their families
46 and its executive or administrative personnel and their families
47 or to contribute any corporate funds;

48 (E) For a corporation or a separate segregated fund estab-
49 lished by a corporation to receive contributions to the fund from
50 any person other than its stockholders and their immediate
51 families and its executive or administrative personnel and their
52 immediate families;

53 (F) For a corporation to engage in job discrimination or to
54 discriminate in job promotion or transfer because of an em-
55 ployee's failure to make a contribution to a separate segregated
56 fund;

57 (G) For a separate segregated fund to make any contribu-
58 tion, directly or indirectly, in excess of one thousand dollars in
59 connection with any campaign for nomination or election to or
60 on behalf of any elective office in the State or any of its
61 subdivisions, or in connection with or on behalf of any commit-
62 tee or other organization or person engaged in furthering,
63 advancing, supporting or aiding the nomination or election of
64 any candidate for any such office;

65 (H) For a corporation to pay, give or lend, or authorize to
66 be paid, given or lent, any moneys or other things of value
67 belonging to the corporation to a separate segregated fund for
68 any purpose. This provision shall not be deemed to prohibit a
69 separate segregated fund from using the property, real or
70 personal, facilities and equipment of a corporation solely to
71 establish, administer and solicit contributions to the fund,
72 subject to the rules of the State Election Commission as
73 provided in subsection (d) of this section: *Provided*, That any
74 such corporation shall also permit any group of employees
75 thereof represented by a bona fide political action committee to
76 use the real property of the corporation solely to establish,
77 administer and solicit contributions to the fund of the political
78 action committee, subject to the rules of the State Election
79 Commission as provided in subsection (d) of this section. No
80 property, real or personal, facilities, equipment, materials or
81 services of a corporation may be used for the purpose of
82 influencing any voter or voters to vote for a particular candidate
83 or in any particular manner or to influence the result of any
84 election.

85 (3) For the purposes of this section, the term "executive or
86 administrative personnel" means individuals employed by a

87 corporation who are paid on a salary rather than hourly basis
88 and who have policy-making, managerial, professional or
89 supervisory responsibilities.

90 (c) Any person or corporation violating any provision of
91 this section shall be guilty of a misdemeanor and, on convic-
92 tion, shall be fined not more than ten thousand dollars. No
93 corporation may reimburse any person the amount of any fine
94 imposed pursuant to this section.

95 (d) To ensure uniform administration and application of the
96 provisions of this section and of those of the Federal Election
97 Campaign Act Amendments of 1976 relating to corporate
98 contributions, the State Election Commission shall propose
99 rules for legislative approval in accordance with the provisions
100 of article three, chapter twenty-nine-a of this code to implement
101 the provisions of this section consistent, insofar as practicable,
102 with the rules and regulations promulgated by the Federal
103 Election Commission to carry out similar or identical provi-
104 sions of 2 U.S.C. §441b.

105 (e) In addition to the powers and duties set forth in article
106 one-a of this chapter, the State Election Commission has the
107 following powers and duties:

108 (1) To investigate, upon complaint or on its own initiative,
109 any alleged violations or irregularities of this article.

110 (2) To administer oaths and affirmations, issue subpoenas
111 for the attendance of witnesses, issue subpoenas duces tecum to
112 compel the production of books, papers, records and all other
113 evidence necessary to any investigation.

114 (3) To involve the aid of any circuit court in the execution
115 of its subpoena power.

116 (4) To report any alleged violations of this article to the
117 appropriate prosecuting attorney having jurisdiction, which
118 prosecuting attorney shall present to the grand jury such alleged

119 violations, together with all evidence relating thereto, no later
120 than the next term of court after receiving the report.

121 (f) The Attorney General shall, when requested, provide
122 legal and investigative assistance to the State Election Commis-
123 sion.

124 (g) Any investigation either upon complaint or initiative,
125 shall be conducted in an executive session of the State Election
126 Commission and shall remain undisclosed except upon an
127 indictment by a grand jury.

128 (h) Any person who discloses the fact of any complaint,
129 investigation or report or any part thereof, or any proceedings
130 thereon, is guilty of a misdemeanor and, upon conviction shall
131 be fined not less than one thousand dollars, nor more than five
132 thousand dollars, and shall be imprisoned in jail not less than
133 six months nor more than one year.

**§3-8-12. Additional acts forbidden; circulation of written matter;
newspaper advertising; solicitation of contribu-
tions; intimidation and coercion of employees;
promise of employment or other benefits; limita-
tions on contributions; public contractors; pen-
alty.**

1 (a) No person may publish, issue or circulate, or cause to be
2 published, issued or circulated, any anonymous letter, circular,
3 placard, radio or television advertisement or other publication
4 supporting or aiding the election or defeat of a clearly identified
5 candidate.

6 (b) No owner, publisher, editor or employee of a newspaper
7 or other periodical may insert, either in its advertising or
8 reading columns, any matter, paid for or to be paid for, which
9 tends to influence the voting at any election, unless directly
10 designating it as a paid advertisement and stating the name of
11 the person authorizing its publication and the candidate in
12 whose behalf it is published.

13 (c) No person may, in any room or building occupied for
14 the discharge of official duties by any officer or employee of
15 the State or a political subdivision of the State, solicit orally or
16 by written communication delivered within the room or
17 building, or in any other manner, any contribution of money or
18 other thing of value for any party or political purpose, from any
19 postmaster or any other officer or employee of the federal
20 government, or officer or employee of the State, or a political
21 subdivision of the State. No officer, agent, clerk or employee of
22 the federal government, or of this state, or any political subdivi-
23 sion of the State, who may have charge or control of any
24 building, office or room, occupied for any official purpose, may
25 knowingly permit any person to enter any building, office or
26 room, occupied for any official purpose for the purpose of
27 soliciting or receiving any political assessments from, or
28 delivering or giving written solicitations for, or any notice of,
29 any political assessments to, any officer or employee of the
30 State, or a political subdivision of the State.

31 (d) Except as provided in section eight of this article, no
32 person entering into any contract with the State or its subdivi-
33 sions, or any department or agency of the State, either for
34 rendition of personal services or furnishing any material,
35 supplies or equipment or selling any land or building to the
36 State, or its subdivisions, or any department or agency of the
37 State, if payment for the performance of the contract or
38 payment for the material, supplies, equipment, land or building
39 is to be made, in whole or in part, from public funds may,
40 during the period of negotiation for or performance under the
41 contract or furnishing of materials, supplies, equipment, land or
42 buildings, directly or indirectly, make any contribution to any
43 political party, committee or candidate for public office or to
44 any person for political purposes or use; nor may any person or
45 firm solicit any contributions for any purpose during any
46 period.

47 (e) No person may, directly or indirectly, promise any
48 employment, position, work, compensation or other benefit
49 provided for, or made possible, in whole or in part, by Act of
50 the Legislature, to any person as consideration, favor or reward
51 for any political activity for the support of or opposition to any
52 candidate, or any political party in any election.

53 (f) No person may, directly or indirectly, make any contri-
54 bution in excess of the value of one thousand dollars in connec-
55 tion with any campaign for nomination or election to or on
56 behalf of any statewide office, in connection with any other
57 campaign for nomination or election to or on behalf of any
58 other elective office in the state or any of its subdivisions, or in
59 connection with or on behalf of any person engaged in further-
60 ing, advancing, supporting or aiding the nomination or election
61 of any candidate for any of the offices.

62 (g) No political organization (as defined in Section
63 527(e)(1) of the Internal Revenue Code of 1986) may solicit or
64 accept contributions until it has notified the Secretary of State
65 of its existence and of the purposes for which it was formed.
66 During the two-year election cycle, a political organization (as
67 defined in Section 527 (e) (1) of the Internal Revenue Code of
68 1986) may not accept contributions totaling more than one
69 thousand dollars from any one person prior to the primary
70 election and contributions totaling more than one thousand
71 dollars from any one person after the primary and before the
72 general election.

73 (h) It shall be unlawful for any person to create, establish or
74 organize more than one political organization (as defined in
75 Section 527(e)(1) of the Internal Revenue Code of 1986) with
76 the intent to avoid or evade the contribution limitations con-
77 tained in subsection (g) of this section.

78 (i) Notwithstanding the provisions of subsection (f) of this
79 section to the contrary, no person may, directly or indirectly,

80 make contributions to a state party executive committee or state
81 party legislative caucus committee which, in the aggregate,
82 exceed the value of one thousand dollars in any calendar year.

83 (j) The limitations on contributions contained in this section
84 do not apply to transfers between and among a state party
85 executive committee or a state party's legislative caucus
86 political committee from national committees of the same
87 political party: *Provided*, That transfers permitted by this
88 subsection may not exceed fifty thousand dollars in the aggregate
89 in any calendar year to any state party executive committee
90 or state party legislative caucus political committee: *Provided*,
91 *however*, That the moneys transferred may only be used for
92 voter registration and get-out-the-vote activities of the state
93 committees.

94 (k) No person may solicit any contribution, other than
95 contributions to a campaign for or against a county or local
96 government ballot issue, from any nonelective salaried em-
97 ployee of the state government or of any of its subdivisions:
98 *Provided*, That in no event shall any person acting in a supervi-
99 sory role solicit a person who is a subordinate employee for any
100 contribution. No person may coerce or intimidate any
101 nonelective salaried employee into making a contribution. No
102 person may coerce or intimidate any nonsalaried employee of
103 the state government or any of its subdivisions into engaging in
104 any form of political activity. The provisions of this subsection
105 may not be construed to prevent any employee from making a
106 contribution or from engaging in political activity voluntarily
107 without coercion, intimidation or solicitation.

108 (l) No person may solicit a contribution from any other
109 person without informing the other person at the time of the
110 solicitation of the amount of any commission, remuneration or
111 other compensation that the solicitor or any other person will
112 receive or expect to receive as a direct result of the contribution
113 being successfully collected. Nothing in this subsection may be

114 construed to apply to solicitations of contributions made by any
115 person serving as an unpaid volunteer.

116 (m) No person may place any letter, circular, flyer, adver-
117 tisement, election paraphernalia, solicitation material or other
118 printed or published item tending to influence voting at any
119 election in a roadside receptacle unless it is: (1) Approved for
120 placement into a roadside receptacle by the business or entity
121 owning the receptacle; and (2) contains a written acknowledg-
122 ment of the approval. This subdivision does not apply to any
123 printed material contained in a newspaper or periodical pub-
124 lished or distributed by the owner of the receptacle. The term
125 "roadside receptacle" means any container placed by a newspa-
126 per or periodical business or entity to facilitate home or
127 personal delivery of a designated newspaper or periodical to its
128 customers.

129 (n) Any person violating any provision of this section is
130 guilty of a misdemeanor and, upon conviction thereof, shall be
131 fined not more than one thousand dollars, or confined in a
132 regional or county jail for not more than one year, or, in the
133 discretion of the court, be subject to both fine and confinement.

134 (o) The provisions of subsection (k) of this section,
135 permitting contributions to a campaign for or against a county
136 or local government ballot issue shall become operable on and
137 after the first day of January, two thousand five.

138 (p) The limitations on contributions established by subsec-
139 tion (g) of this section do not apply to contributions made for the
140 purpose of supporting or opposing a ballot issue, including a
141 constitutional amendment.

§3-8-14. Effective date of certain criminal offenses.

1 The criminal offenses created in sections two, seven and
2 twelve of this article by the provisions of Enrolled Committee
3 Substitute for House Bill No. 402 during the fourth extraordi-

4 nary session, two thousand five, shall be effective ninety days
5 from passage.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



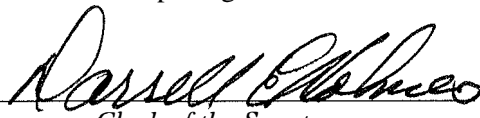
Chairman Senate Committee




Chairman House Committee

Originating in the House.

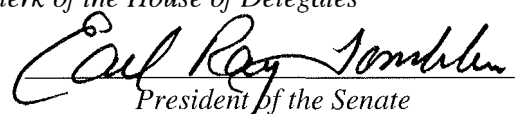
In effect from passage.



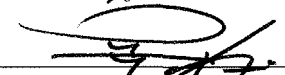
Clerk of the Senate



Clerk of the House of Delegates

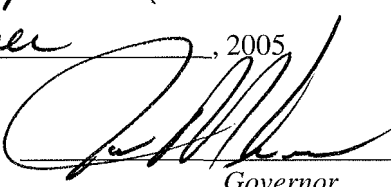


President of the Senate



Speaker of the House of Delegates

The within is approved this the 30th
day of September, 2005.



Governor

PRESENTED TO THE
GOVERNOR

Date 9/16/05

Time 4:25 p